

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES INC,

Defendants.

Case No. 2:21-cv-799-RSM-TLF
**ORDER FOR SUPPLEMENTAL
BRIEFING**

The Court is aware that proposed amendments to the Federal Rules of Evidence were submitted to Congress by Chief Justice John G. Roberts, Jr., on April 24, 2023. If Congress does not act, these proposed amendments will take effect on December 1, 2023, and will govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending. Included in the rule amendments is Federal Rule of Evidence 702. [Pending Rules and Forms Amendments | United States Courts \(uscourts.gov\)](https://www.uscourts.gov/pending-rules-and-forms-amendments-united-states-courts)

The text of amended Fed. R. Evid. 702 would be (new language is underlined, omitted language is lined through):

A witness who is qualified as an expert by knowledge, skill,

experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the ~~expert has reliably applied~~ expert's opinion reflects a reliable application of the principles and methods to the fact of the case.

In this case, the dispositive motions, and motions to exclude expert witness evidence, are noted for November 10, 2023, but the Report and Recommendation of the Magistrate Judge, and the ruling by District Judge Ricardo Martinez, would not be entered until after December 1. Further, any potential trial would also be set for a time after December 1. Thus, if the amended Federal Rule of Evidence 702 goes into effect on December 1, it would be just and practicable to apply the amended rule to this matter.

The Court, therefore, directs the parties to submit supplemental briefing addressing whether the changes to Federal Rule of Evidence 702, as amended, would impact their summary judgment motions or the other motions relating to experts.

1 The parties are limited to 10 pages for this supplemental brief and are
2 instructed to submit their respective briefs no later than **November 16, 2023**.
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4 Dated this 30th day of October, 2023.

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8 Theresa L. Fricke
United States Magistrate Judge
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